



National Aeronautics and
Space Administration
Washington, DC 20546

Procurement Notice

PN 04-74
October 29, 2012

ANCHOR TENANCY

PURPOSE: The purpose of this PN is to delete the current NFS prohibition on Anchor Tenancy contracts and add a policy which permits Anchor Tenancy contracts under very limited circumstances.

BACKGROUND: NASA's Federal Acquisition Regulation Supplement (NFS) currently contains an inaccurate prohibition on anchor tenancy contracts. The prohibition is included in the NFS based on The Space Act, as amended by NASA's FY 1992 Appropriations Act (42 USC 2459d). The NFS states no appropriated funds may be used to enter into contracts, grants, or other agreements for more than 1 year if the primary effect is to provide a guaranteed customer base for or establish an anchor tenancy in new commercial space hardware or services unless an appropriations Act specifies the new commercial space hardware or services to be developed/used or the contract, grant, or agreement is specified in an appropriations Act. However, subsequent to the prohibition, as part of NASA's FY 1993 Authorization Act, 15 U.S.C. 5806 was added to the Commercial Space Competitiveness Act (CSCA). The latter statute includes limited authority for NASA to enter into multi-year anchor tenancy contracts for the purchase of a good or service if the Agency receives an appropriation that 1) authorizes a multi-year anchor tenancy contract and 2) specifies the commercial space product or service to be developed or used. Furthermore, the NASA Administrator would be required to make a determination that addresses the following 6 criteria:

- (1) the good or service meets the mission requirements of NASA;
- (2) the commercially procured good or service is cost effective;
- (3) the good or service is procured through a competitive process;
- (4) existing or potential customers for the good or service other than the United States Government have been specified identified;
- (5) the long-term viability of the venture is not dependent upon a continued Government market or other nonreimbursable Government support; and
- (6) private capital is at risk in the venture.

ACQUISITIONS AFFECTED BY CHANGES: This policy is applicable to all solicitations issued on or after the effective date of this PN.

ACTIONS REQUIRED BY CONTRACTING OFFICERS: None. This policy does not affect individual procurements and NASA does not currently have an appropriation which authorizes Anchor Tenancy contracts.

CLAUSE CHANGES: None.

PARTS AFFECTED: Part 1812.

EFFECTIVE DATE: This PN is effective November 28, 2012, and will automatically be cancelled when incorporated into the NASA FAR Supplement (NFS).

REPLACEMENT PAGES: Replacement pages will no longer be distributed. NFS changes will be posted to the official on-line version.

TYPE OF RULE AND PUBLICATION DATE: These changes were published as a final rule in the Federal Register (FR Vol. 77, No. 209, 65496 - 65497) October 29, 2012.

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Enclosures

PART 1812
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PART 1812
ACQUISITION OF COMMERCIAL ITEMS

**Subpart 1812.3--Solicitation Provisions and Contract Clauses
for the Acquisition of Commercial Items**

1812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f)(i) The following clauses are authorized for use in acquisitions of commercial items when required by the clause prescription:

- (A) 1852.214-71, Grouping for Aggregate Award.
- (B) 1852.214-72, Full Quantities.
- (C) 1852.215-84, Ombudsman.
- (D) 1852.219-75, Small Business Subcontracting Reporting.
- (E) 1852.219-76, NASA 8 Percent Goal.
- (F) 1852.223-70, Safety and Health.
- (G) 1852.223-71, Frequency Authorization.
- (H) 1852.223-72, Safety and Health (Short Form).
- (I) 1852.223-73, Safety and Health Plan.
- (J) 1852.223-75, Major Breach of Safety and Security.
- (K) [RESERVED]
- (L) 1852.228-76, Cross-Waiver of Liability for International Space Station Activities.
- (M) 1852.228-78, Cross-Waiver of Liability for Space or Space Exploration Activities.
- (N) 1852.246-72, Material Inspection and Receiving Report.

(ii) No other provisions and clauses prescribed in the NFS or center documents shall be used in acquisitions of commercial items, except as permitted by [FAR 12.302](#).

1812.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(c) The Assistant Administrator for Procurement (Code HS) is the approval authority for waivers. Requests shall be prepared and submitted in accordance with [1801.471](#).

Subpart 1812.4--Unique Requirements Regarding Terms and Conditions for Commercial Items

1812.404 Warranties.

(b) In acquisitions under the Simplified Acquisition Threshold specified in [FAR Part 13](#), no express warranty should be required other than the offeror's commercial warranty.

Subpart 1812.70--Commercial Space Hardware or Services

1812.7000 Anchor tenancy contracts.

(a) Subject to receiving an appropriation that:

- (1) Authorizes a multi-year anchor tenancy contract; and
- (2) Specifies the commercial space product or service to be developed or used, NASA may enter into a multi-year anchor tenancy contract only if Administrator determines –
 - (i) The good or service meets the mission requirements of the National Aeronautics and Space Administration;
 - (ii) The commercially procured good or service is cost effective;
 - (iii) The good or service is procured through a competitive process;
 - (iv) Existing or potential customers for the good or service other than the United States Government have been specifically identified;
 - (v) The long-term viability of the venture is not dependent upon a continued Government market or other nonreimbursable Government support; and
 - (vi) Private capital is at risk in the venture.

(b) Contracts entered into under such authority may provide for the payment of termination liability in the event that the Government terminates such contracts for its convenience.

(i) Contracts that provide for this payment of termination liability shall include a fixed schedule of such termination liability payments. Liability under such contracts shall not exceed the total payments which the Government would have made after the date of termination to purchase the good or service if the contract were not terminated.

(ii) Subject to appropriations, funds available for such termination liability payments may be used for purchase of the good or service upon successful delivery of the good or service pursuant to the contract. In such case, sufficient funds shall remain available to cover any remaining termination liability.

(c) Limitations:

- (1) Contracts entered into under such authority shall not exceed 10 years in duration.
- (2) Such contracts shall provide for delivery of the good or service on a firm, fixed price basis.
- (3) To the extent practicable, reasonable performance specifications shall be used to define technical requirements in such contracts.
- (4) In any such contract, the Administrator shall reserve the right to completely or partially terminate the contract without payment of such termination liability because of the contractor's actual or anticipated failure to perform its contractual obligations.

(d) The term "anchor tenancy" means an arrangement in which the United States Government agrees to procure sufficient quantities of a commercial space product or service needed to meet Government mission requirements so that a commercial venture is made viable.